

**Equality and
Human Rights
Commission**

equalityhumanrights.com

Fergus Cochrane
Public Petitions Committee
The Scottish Parliament
Edinburgh
EH99 1SP

Dear Mr Cochrane,

RE - PETITION PE 1364, Clarifying guidance on Gypsy/ Traveller encampments.

The Equality and Human Rights Commission (the Commission) was established by statute in the Equality Act 2006 and came into being on 1 October 2007. The Commission champions equality and human rights for all, working to eliminate discrimination, reduce inequality, protect human rights and make sure that everyone has a fair chance to participate in society. We promote equality across the seven protected grounds – age, disability, gender, race, religion and belief, sexual orientation and gender reassignment.

The Commission welcomes the opportunity to respond to the issues raised in this petition as we have a long standing concern about the management of Gypsy / Traveller sites in Scotland and most particularly in the North East. The Commission approaches this issue through two lenses - firstly the right for Gypsy / Travellers not to face discrimination, and secondly the requirement placed on public authorities in Scotland under the Race Equality Duty to "promote good

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The Equality and Human Rights Commission was established by the Equality Act 2006 as the Commission for Equality and Human Rights.

race relations". In respect of the "good race relations" duty the Commission is clear that this issue requires a balancing of interests, and that policies which are felt to "favour" Gypsy/ Travellers over settled communities, or indeed the settled community over Gypsy Travellers, are likely to lead to tensions in the community which, with good planning, could be avoided.

The Commission recognises the distress and anxiety that unlawful encampments can have on members of the settled community , although we would stress that this is not the case with every encampment. The failure of public authorities to deal effectively with the issues such encampments raise has led to a crisis in confidence amongst some residents groups and a strong feeling that their voices are not being heard. As above, this has the potential to polarise public opinion and lead to a further deterioration in good race relations. However we feel that the issue must be placed in the wider context of the management of supply and demand of fixed and temporary sites, rather than policy being made in response to repeated but isolated incidents.

The Commission wishes to express its concerns that although currently unstated in debate, there is a danger that Scotland could return to the 'Toleration policy' of Gypsy /Travellers that was in force until the start of the 21st Century. The Toleration policy, put bluntly, set a reverse quota on the number of Gypsy/ Travellers that would be "tolerated" in any given local authority area (eg no more than 20 pitches). Once an agreed number of pitches were reached the Police were required to move Travellers out of the area. We believe that the Toleration policy was offensive, unworkable and unlawful and would strongly caution against any attempt to revive it in the 21st Century.

The Local Context.

We very much welcome Ms McBain's petition and her subsequent additional statement as being a helpful and measured contribution to a debate which is too often dominated by division and anger and played out in the press. We are concerned that the tone of the public debate in the North East in recent months has been largely negative and is likely to lead to deterioration in good race relations in the area with the potential to spill over into disorder.

The Commission disagrees with the Scottish Government's position that provision for Gypsy Travellers is a matter solely for local authorities. We feel that local authorities need to work in partnership with their statutory partners and with communities across the area to reach a resolution to this issue. We feel that a regional approach, rather than a local authority approach, is the only solution to an issue which has simmered for many years but has come into sharp focus in 2010. In common with many other commentators the Commission feels that a network of halting sites across the North East, augmented by a network of permanent, properly resourced and managed sites would contribute greatly to easing the pressure of unlawful encampments in high profile areas. We regret that the Scottish Government has chosen to roll up the funding of Gypsy Traveller sites into the general local authority settlement particularly at this time when there is a huge need for pump priming to establish such a network, but in a time of significant austerity. We do however note that none of the authorities in the North East has taken proper advantage of the specialist fund that was available to them and we view this as a missed opportunity - had these authorities chosen to press ahead with provision we may not be in the position that we are today and this combined inaction has contributed to poor race relations in the area.

The Commission, and its predecessor body the Commission for Racial Equality, has on many occasions highlighted the social and economic situation of Scottish Gypsy Travellers as being one of the most marginalised and discriminated groups in Scotland. In contrast with other groups however, the Scottish Gypsy Travelling community attracts little sympathy in public debate and the actions of a few tend to define the community as a whole. The Commission wholly supports action against those who break the law but the community as whole should not suffer for the actions of a minority.

Legal Definitions and Protections.

The SPICE briefing sets out the legal context for the petition but does not address a misconception which appears to be at the heart of current debates in the North East. For many years the local press and communities have used terms such as 'rogue travellers' and more recently 'occupational travellers' in an apparent attempt to distinguish between people they consider to be "proper Romanies and those who

they feel may be claiming, and abusing, a legal status which they are not entitled to. Whilst we do not propose to go into the historical roots of the communities in question, it may be helpful to set out the legal protections and responsibilities under Equality law.

Scottish Gypsy Travellers were long felt to have protection under the Race Relations Act 1976 (RRA), and indeed this was the stance of successive Scottish administrations, ACPOS and COSLA. This status was confirmed in a judgement in *McLellan v GTEIP* in 2009. Protection from discrimination under the RRA was similarly confirmed for Romanys in the case of *CRE v Dutton* in 1989, and for Irish Travellers in Britain in *O'Leary v Allied Domecq* in 2000.

Occupational Travellers, who are primarily Show and Circus people, have never sought such protection and as an occupational rather than a racial group we feel it is unlikely that they would succeed if they tried. It is however worth noting that Show people face similar forms of discrimination and negative social attitudes often they state, because they are confused with Gypsy/ Travellers.

New Age Travellers similarly have no protection under the RRA.

All groups above, however, have protection from discrimination under the Human Rights Act and public authorities need to consider these particularly in relation to Article 8, the protection of family life (which could be compromised in evictions). The Scottish Human Rights Commission has responsibility for Human Rights in devolved settings and we recommend that the Petitions Committee also seeks their views on this matter. The Commission has urged the Scottish Government to resolve the issue raised by *Connors v UK* in 2005, a European Court judgement which highlights the need for protection against eviction on local authority Travellers sites where the threshold for such action is much lower than for comparable local authority tenants.

In the North East we believe that the Travellers who are currently the subject of press and political attention are of both Irish and English origin and are therefore protected from discrimination by the RRA. Public Authorities also need to be mindful of their race equality duties under the amended RRA to "have due regard to the need to eliminate

discrimination, promote equality of opportunity and good race relations", in regard to these groups.

However it must be stressed that the RRA does not prevent public or private, bodies from taking action in respect of unlawful acts. The action that is taken needs to be proportionate and should not be used selectively to "target" a particular group on the basis of their ethnic or racial origins. The Commission is concerned that some of the proposals that have been reported recently appear to be calling for particular practices, regulations or laws to be introduced solely to deal with particular ethnic or racial groups.

Guidance on Unauthorised Encampments.

The Commission has recently reviewed the guidance on offer to public authorities from a range of advisory bodies. In essence, whilst we see that there are some issues which may need clarification, we feel that the guidance is fit for purpose in terms of the issues public bodies faced at the time it was issued. Where there are problems, we feel that these are primarily issues of interpretation. We do not see the need for a wholesale revision of this guidance at this time, although the Committee may feel that it would be pertinent to review the operation, rather than the intent of the guidance, to take into account changes in patterns of travelling which Scotland is currently experiencing. Like others, we believe that the current overwintering of Irish Travellers in Scotland is in response to recent changes in practice in the Irish Republic which may not be sustained. We would caution against the Government issuing wholly new guidance on Gypsy Traveller encampments - prompted by this recent change in circumstances - which was always intended to resolve issues between Scottish Gypsy Travellers and public authorities, given the potential for an adverse impact on this group. The Commission's own research into this issue suggests strongly that there is an unresolved issue of supply and demand of temporary halting sites for Scottish Gypsy Travellers, which is currently being masked by the debate over Irish Travellers. Any review of the issue therefore needs to take account of the different and distinct patterns of travelling and respond to them proportionately.

Broadly speaking we feel that the approach to prosecution set out in paragraph 63 of the Scottish Offices' guidance of 2004 is balanced and fair. We recognise, however, that this places public bodies in the

unenviable position of having to determine - often in heated circumstances - what weight should be given to "public interest considerations depending on the circumstances". However, the guidance is intended to provide flexibility and simply to evict with no thought to the availability of other suitable land would be irresponsible. The guidance does make it clear that the public interest includes issues of "safety", "health hazards" and repeated encampments.

We feel that for the avoidance of doubt, the scope of the intended application of the guidance should be clarified as in its current form (paragraph 2), its references to Occupational Travellers could be misinterpreted.

We would suggest that references in Annex B and in paragraphs 58 - 60 refer only to criminal law and fail to mention the availability of a range of civil remedies such as interdicts or actions for recovery of possessions. We find the concluding remarks in paragraph 60, that "private landowners should take their own legal advice and action, where appropriate", unhelpful and it may be that reliance on this section has led to circumstances which affected Ms McBain. Where there has been unauthorised encampment on a private landowner's land, local authorities can request that the Police intervene where criminal acts are believed to have been committed. We therefore feel that the guidance could be revised in this respect to reflect the full range of remedies available to different actors.

Concluding remarks.

The Commission agrees with the petitioner that "the real goal which has to be achieved from this process is the opportunity for more authorised sites for the Gypsy / Traveller community throughout Scotland". We believe that the only way in which relations between Gypsy Traveller communities and the settled community will be resolved is through acceptance on all sides of the following three basic pre-conditions:

1. Land - that until sufficient appropriate land is secured for Gypsy Travellers the issue of unlawful encampment will continue to fester.
2. Legitimacy - that there needs to be acceptance on all sides that Gypsy Travellers, whether indigenous to Scotland or as temporary

visitors, are a part of Scottish society and have been for many centuries. They have rights and responsibilities that must be upheld.

3. Leadership - central to any resolution is the willingness of local leaders - particularly political leaders - to focus on the solution to the problems and not the symptoms. Gypsy Travellers communities must also identify and respect leadership within their own communities to enable productive discussions.

Yours sincerely,

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